

THE LEGAL ASSISTANCE OFFICES OF
III CORPS, 1ST CAVALRY DIVISION, 4TH INFANTRY DIVISION(MECHANIZED)
FORT HOOD, TEXAS 76544

DEBT COLLECTION

I. THE FEDERAL FAIR DEBT COLLECTION PRACTICES ACT (FFDCP)

A. How the FFDCP protects you.

1. **General Information** - An individual who has a debt arising from a loan or credit purchase for items of personal, family, or household purposes is protected from unfair and abusive practices by a debt collector. A debt collector is an individual or business employed by the creditor to recover the debt, that is the third parties trying to collect the debt. The FFDCP does not include the original creditor as a debt collector. the Act protects the consumer, the consumer's spouse, parent, and personal representative.

2. Improper debt collector communications

- a. Contacting persons other than the consumer, unless the consumer has given express consent. during these conversations, the debt collector may not discuss the debt or that the consumer owes a debt.
- b. Communicating by postcard or any other medium which would indicate that the correspondence involves a debt.
- c. If the debt collector knows that an attorney represents the consumer he/she must not communicate with anyone other than the attorney.
- d. Communicating or attempting to communicate with the consumer at any unusual time or place inconvenient to the consumer. A convenient time is assumed to be after 8 a.m. and before 9 p.m. at the consumer's location.
- e. Contact the debtor at the consumer's place of business if the collector knows or has reason to know that the consumer's employer prohibits such communications.
- f. Communication after the debtor provides written notice that he/she does not wish to be contacted.

3. Statutory prohibitions

- a. **Harassment or abuse.** This is defined as any conduct which would naturally harass, oppress, or abuse any person in connection with the collection of a debt. Specifically, it includes:
 - (1) The threat of violence or other criminal means to harm the person, reputation or property of any person.
 - (2) Publishing a list of consumers who refuse to pay debts.
 - (3) Advertising the sale of a debt to coerce payment.
 - (4) Causing a telephone to ring or continuously calling with the intent to harass, annoy, or abuse any person at that number.
 - (5) Calling without full disclosure of the caller's identity.
- b. **False or misleading representations.** A debt collector cannot engage in the following actions:
 - (1) Falsely represent that the debt collector is affiliated with any government agency.

- (2) False representations of the character, amount, or legal status of the debt.
- (3) False representation that he communication is from an attorney.
- (4) False representation that nonpayment will result in imprisonment or garnishment, attachment, or sale of property of wages of the person unless the action is lawful.
- (5) Threatening to take any action that cannot legally be taken.
- (6) Falsely representing or implying that he consumer committed any crime to disgrace the consumer.
- (7) Threatening to communicate any information about the debt known to be false, which includes failing to communicate that a debt is disputed.
- (8) Using a document which falsely represents that the collectors attempt is authorized or approved by a court or government agency.
- (9) Using deceptive means to collect the debt or obtain information concerning the consumer.
- (10) Falsely representing that he documents are in connection with a law suit.
- (11) To use any name other than the true name of the collector's business, company or organization.
- (12) Falsely representing that the debt collector is employed by a consumer reporting agency.
- (13) Fail to include a paragraph which explains that the correspondence an attempt to collect a debt and that any statements or letters may be used against the debtor.

c. **Unfair practices.** the following are considered unfair practices and are prohibited by federal law:

- (1) Collection of any amount, including interest, fees or charges, unless the amount was authorized in the original agreement giving rise to the debt.
- (2) Accepting a post-dated check more than five (5) days unless the debt collector notifies the consumer in writing of its intention to deposit the check 3 days prior to the deposit.
- (3) The solicitation of any post-dated check for the purpose of threatening or instituting criminal action.
- (4) Depositing or threatening to deposit any post-dated check prior to the date on the check.
- (5) Making collect telephone calls to the consumer or sending correspondence that requires the consumer to pay fees.
- (6) Threatening to take nonjudicial action to seize property unless there is a contractual or legal right to do so.
- (7) Communicating by post card or other item which reveals that the communication regards a debt collection.

B. **Communications with debt collectors.**

1. The debt collectors initial correspondence must disclose that its purpose is to collect a debt. Any information obtained from the consumer will be used for that purpose.
2. You can stop a debt collector from contacting you, by taking the following steps:
 - (a) You must notify the debt collector in writing within 30 days of receiving the correspondence from the debt collector.

- (b) In the letter you tell them to cease all communications with you.
- (c) The debt collector must stop contacting you, except to tell you that further collection efforts are being terminated or that the creditor intends to invoke other remedies, including legal action to collect on the debt.

C. How to dispute the debt being collected.

- 1. **Validation** - the debt collector must, within five days from the initial correspondence, provide you written notice of the amount of the debt and name of the creditor. The debt collector must also notify you that the debt is assumed to be valid unless you dispute it.
- 2. **Disputed debts** - if the consumer notifies the debt collector in writing within the thirty-day period that the debt is disputed, the debt collector must cease all collection efforts. Then the debt collector must verify the debt and will forward that verification to you.

D. Civil Liability for Failure to Comply with the Fair Debt Collection Act.

- 1. **Damages** - If a debt collector violates federal law, the consumer may recover actual damages suffered as a result of the violation. The court may allow additional damages up to \$1,000 depending on the nature of the violation. The consumer may also recover reasonable attorney fees and costs of the action. However, **the consumer** may also be responsible for costs and fees if the court holds that the lawsuit was brought in bad faith or with an intent to abuse legal process.
- 2. **Jurisdiction** - An action to enforce this act may be brought in a U.S. District Court in that jurisdiction or in the state court. The action must be brought within one year from the time the violation occurred.

II. THE TEXAS FAIR DEBT COLLECTION PRACTICES ACT

The most important distinction between the Federal Act and the Texas Act is the definition of “debt collector”. Under Texas law, the definition includes **any** person involved in the collection of a debt including the original creditor.

A. Prohibitions under Texas law.

- 1. **Debt collectors shall not make threats or coerce payments, which include:**
 - (a) Threaten violence or criminal means to collect.
 - (b) Accuse or threaten to accuse, falsely, any person of committing fraud.
 - (c) Disclose to anyone that the debtor is willfully refusing to pay a non-disputed debt when the debt is actually disputed and the debt collector has been notified in writing.
 - (d) Threaten to assign the debt to another with the false representation that the result being that the consumer would lose any defenses or would be subject to illegal collection attempts.
 - (e) Threaten that the consumer will be arrested for nonpayment of an alleged debt without proper court proceedings; the collector can, however, inform the consumer that arrest may be appropriate if the debtor has violated state laws.
 - (f) Threaten to file charges against a debtor when no criminal acts have been committed.
 - (g) Threaten seizure or repossession of property without proper court proceedings (except in cases where the creditor has a security interest or

contractual right to the property).

(h) Threaten to take any action prohibited by law.

2. A debt collector may not use unfair or unconscionable means to collect a debt, including:

- (a) Seeking a written statement or acknowledgment that the consumer incurred the debt as a “necessity of life”.
- (b) Seeking an interest on the debt other than what agreed to in the original obligation.

3. A debt collector may not use harassment or abusive tactics to recover a debt, including:

- (a) Using profanity or obscene language or language that is intended to abuse the hearer or reader.
- (b) Telephone calls without disclosing the name of the caller and with the intent to annoy or harass the person called.
- (c) Collect calls to the debtor or to make the consumer pay charges for a telegram or other form of communication.
- (d) Causing a telephone to ring continuously or make repeated phone calls with the intent to harass.

4. A debt collector may not use fraudulent, deceptive, or misleading representations to collect a debt, including:

- (a) Use of any name other than true name of the debt collector.
- (b) To lie to the consumer that the collector has information in his possession or something of value to the consumer to solicit information.
- (c) Fail to disclose to the consumer the name of the person to whom the debt is assigned at the time of making the demand.
- (d) The collector has to disclose that he is attempting to collect a debt.
- (e) The collector must disclose the name of the debt collector and its street address when the notice refers to a delinquent debt; the collector cannot require the debtor to respond to a place other than the collector’s street address or post office box.
- (f) Misrepresent the character, extent, or amount of debt against a consumer, or falsely state that a lawsuit has been initiated.
- (g) Falsely represent that the collector is affiliated with a government agency.
- (h) Use of any documents which give the false impression that a court or other government agency has authorized the collection of the debt.
- (i) Suggesting that the debt owed may be increased by associated costs, interest or finance charges when there is no contract or agreement to those costs.
- (j) Falsely represent that the debt collector is an attorney or law firm.

C. Remedies. Under the Texas Act you may have legal action to prevent a violation of the act or to recover actual damages for a violation. A successful party may be awarded attorney fees and court costs (a defendant may also receive court costs and attorney fees upon finding that the suit is without merit or in bad faith). A successful plaintiff may recover at least \$100 for each violation of the act.

D. Correction of the Third Party Collector’s Files.

If you dispute the accuracy of a debt in a third party debt collector’s file and you give notice to the third party debt collector, the third party debt collector must provide assistance in preparing the notice. The third party debt collector can either deny, admit, or investigate the inaccuracy. If inaccuracy is admitted, the third party debt collector has five days from the date of the notice to correct its files and send everyone receiving

information from the file, including credit reporting companies, notice of the inaccuracy.

Practical applications. While there are several protections for the consumer, including the prohibition on communication when requested in writing, the consumer should be cautioned on using this approach because it leaves no opportunity to negotiate with the collector. Everyone will agree that debt collectors are generally an annoyance and would prefer never to have them call again. However, if you do not dispute the existence or the amount of the debt, it is best to work out some payment arrangement with them. Most debt collector will disagree with a payment arrangement, but the simple truth is that all prefer to have some payments rather than seeking a costly legal action with little certainty of recovery. Always keep track of communications with a debt collectors, including dates and substance of the correspondence. If the debt collector contacts your employer or unit commander, have the person write down what was communicated.

FOR ADDITIONAL INFORMATION CONTACT THE LEGAL ASSISTANCE OFFICES ON FORT HOOD: III Corps, Building 1001, Room C224, 287-7901/3199; 1st Cavalry Division, Building 28000, Room 1155, 287-6060; 4th Infantry Division (Mech), Building 410, Room 175, 287-1850.